

AMENDED IN SENATE MAY 2, 2013
AMENDED IN SENATE APRIL 4, 2013

SENATE BILL

No. 131

Introduced by Senators Beall and Lara
(Coauthor: Assembly Member Skinner)

January 24, 2013

An act to amend Section 340.1 of the Code of Civil Procedure, relating to damages.

LEGISLATIVE COUNSEL'S DIGEST

SB 131, as amended, Beall. Damages: childhood sexual abuse: statute of limitations.

Existing law requires that an action for recovery of damages suffered as a result of childhood sexual abuse, as defined, be commenced within 8 years of the date the plaintiff attains the *age of majority* or within 3 years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by sexual abuse, whichever occurs later. Existing law provides that certain actions may be commenced on and after the plaintiff's 26th birthday if specified conditions are met.

This bill would instead require that an action for recovery of damages suffered as a result of childhood sexual abuse be commenced within 25 years of the date the plaintiff attains the age of majority or within 5 years of the date the fact of the psychological injury and its causal connection to the sexual abuse is first communicated to the plaintiff by a licensed mental health practitioner practicing within the state, whichever period expires later. This bill would provide that these time limits for commencement of an action shall be applied retroactively to any claim that has not been adjudicated to finality on the merits as of

January 1, 2014. This bill would revive, for a period of one year, a cause of action, as specified, that would otherwise be barred by the statute of limitations as of January 1, 2014, provided that the plaintiff discovered the cause of his or her injury on or after January 1, 2004.

This bill would also provide that a plaintiff shall be entitled to conduct discovery before the court may rule on a motion challenging the sufficiency of the plaintiff's showing that a person or entity knew or had reason to know, or was otherwise on notice, of any unlawful sexual conduct and failed to take reasonable steps, and to implement reasonable safeguards, to avoid those act in the future.

~~This bill would recast these provisions of law relating to the recovery of damages in childhood sexual abuse actions. The bill would provide that actions not barred by law in effect prior to January 1, 2014, are not subject to a statute of limitations and that an action for recovery of damages suffered as a result of childhood sexual abuse may be commenced at any time. With regard to an action barred by the law in effect prior to January 1, 2014, the bill would provide that those actions may be commenced within 30 years of the date the plaintiff attains the age of majority or within 5 years of the date of the fact of the injury and its causal connection to the sexual abuse is first communicated to the plaintiff by a practicing physician, psychologist, or clinical psychologist, whichever period expires later. The bill would also repeal the requirement that a plaintiff 26 years of age or older at the time the action is filed file a certificate of merit and would repeal other procedural requirements relating to the action.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 340.1 of the Code of Civil Procedure is*
2 *amended to read:*
3 340.1. (a) In an action for recovery of damages suffered as a
4 result of childhood sexual abuse, the time for commencement of
5 the action shall be within ~~eight~~ 25 years of the date the plaintiff
6 attains the age of majority or within ~~three~~ five years of the date the
7 plaintiff ~~discovers or reasonably should have discovered that~~
8 ~~psychological injury or illness occurring after the age of majority~~
9 ~~was caused by the sexual abuse, fact of the psychological injury~~
10 *and its causal connection to the sexual abuse is first communicated*

1 *to the plaintiff by a licensed mental health practitioner practicing*
2 *within the state, whichever period expires later, for any of the*
3 *following actions:*

4 (1) An action against any person for committing an act of
5 childhood sexual abuse.

6 (2) An action for liability against any person or entity who owed
7 a duty of care to the plaintiff, where a wrongful or negligent act
8 by that person or entity was a legal cause of the childhood sexual
9 abuse ~~which~~ *that* resulted in the injury to the plaintiff.

10 (3) An action for liability against any person or entity where an
11 intentional act by that person or entity was a legal cause of the
12 childhood sexual abuse ~~which~~ *that* resulted in the injury to the
13 plaintiff.

14 (b) (1) No action described in paragraph (2) or (3) of
15 subdivision (a) may be commenced on or after the plaintiff's ~~26th~~
16 *43rd* birthday.

17 (2) This subdivision does not apply if the person or entity knew
18 or had reason to know, or was otherwise on notice, of any unlawful
19 sexual conduct by an employee, volunteer, representative, or agent,
20 and failed to take reasonable steps, and to implement reasonable
21 safeguards, to avoid acts of unlawful sexual conduct in the future
22 by that person, including, but not limited to, preventing or avoiding
23 placement of that person in a function or environment in which
24 contact with children is an inherent part of that function or
25 environment. For purposes of this subdivision, providing or
26 requiring counseling is not sufficient, in and of itself, to constitute
27 a reasonable step or reasonable safeguard. *Notwithstanding any*
28 *other provision of law, a plaintiff shall be entitled to conduct*
29 *discovery before the court may rule on a motion challenging the*
30 *sufficiency of the plaintiff's showing under this subparagraph.*

31 ~~(c) Notwithstanding any other provision of law, any claim for~~
32 ~~damages described in paragraph (2) or (3) of subdivision (a) that~~
33 ~~is permitted to be filed pursuant to paragraph (2) of subdivision~~
34 ~~(b) that would otherwise be barred as of January 1, 2003, solely~~
35 ~~because the applicable statute of limitations has or had expired, is~~
36 ~~revived, and, in that case, a cause of action may be commenced~~
37 ~~within one year of January 1, 2003. Nothing in this subdivision~~
38 ~~shall be construed to alter the applicable statute of limitations~~
39 ~~period of an action that is not time barred as of January 1, 2003.~~

(c) *The time limits for commencement of actions described in subdivisions (a) and (b) shall be applied retroactively to any claim that has not been adjudicated to finality on the merits as of January 1, 2014. Notwithstanding any other provision of law, any cause of action for damages described in paragraph (2) or (3) of subdivision (a) that would otherwise be barred by the statute of limitations as of January 1, 2014, is revived, and, in that case, a cause of action may be commenced within one year of January 1, 2014, provided that the plaintiff discovered the cause of his or her injuries, as described in subdivision (a), on or after January 1, 2004.*

(d) Subdivision (c) does not apply to either of the following:

(1) Any claim that has been litigated to finality on the merits in any court of competent jurisdiction prior to January 1, ~~2003~~ 2014. Termination of a prior action on the basis of the statute of limitations does not constitute a claim that has been litigated to finality on the merits.

(2) Any written, compromised settlement agreement ~~which~~ *that* has been entered into between a plaintiff and a defendant where the plaintiff was represented by an attorney who was admitted to practice law in this state at the time of the settlement, and the plaintiff signed the agreement.

(e) “Childhood sexual abuse” as used in this section includes any act committed against the plaintiff that occurred when the plaintiff was under ~~the age of~~ 18 years *of age* and that would have been proscribed by Section 266j of the Penal Code; Section 285 of the Penal Code; paragraph (1) or (2) of subdivision (b), or of subdivision (c), of Section 286 of the Penal Code; subdivision (a) or (b) of Section 288 of the Penal Code; paragraph (1) or (2) of subdivision (b), or of subdivision (c), of Section 288a of the Penal Code; subdivision (h), (i), or (j) of Section 289 of the Penal Code; Section 647.6 of the Penal Code; or any prior laws of this state of similar effect at the time the act was committed. Nothing in this subdivision limits the availability of causes of action permitted under subdivision (a), including causes of action against persons or entities other than the alleged perpetrator of the abuse.

(f) Nothing in this section shall be construed to alter the otherwise applicable burden of proof, as defined in Section 115 of the Evidence Code, that a plaintiff has in a civil action subject to this section.

1 (g) Every plaintiff ~~26~~ 43 years of age or older at the time the
2 action is filed shall file certificates of merit as specified in
3 subdivision (h).

4 (h) Certificates of merit shall be executed by the attorney for
5 the plaintiff and by a licensed mental health practitioner selected
6 by the plaintiff declaring, respectively, as follows, setting forth
7 the facts ~~which~~ that support the declaration:

8 (1) That the attorney has reviewed the facts of the case, that the
9 attorney has consulted with at least one mental health practitioner
10 who is licensed to practice and practices in this state and who the
11 attorney reasonably believes is knowledgeable of the relevant facts
12 and issues involved in the particular action, and that the attorney
13 has concluded on the basis of that review and consultation that
14 there is reasonable and meritorious cause for the filing of the action.
15 The person consulted may not be a party to the litigation.

16 (2) That the mental health practitioner consulted is licensed to
17 practice and practices in this state and is not a party to the action,
18 that the practitioner is not treating and has not treated the plaintiff,
19 and that the practitioner has interviewed the plaintiff and is
20 knowledgeable of the relevant facts and issues involved in the
21 particular action, and has concluded, on the basis of his or her
22 knowledge of the facts and issues, that in his or her professional
23 opinion there is a reasonable basis to believe that the plaintiff had
24 been subject to childhood sexual abuse.

25 (3) That the attorney was unable to obtain the consultation
26 required by paragraph (1) because a statute of limitations would
27 impair the action and that the certificates required by paragraphs
28 (1) and (2) could not be obtained before the impairment of the
29 action. If a certificate is executed pursuant to this paragraph, the
30 certificates required by paragraphs (1) and (2) shall be filed within
31 60 days after filing the complaint.

32 (i) Where certificates are required pursuant to subdivision (g),
33 the attorney for the plaintiff shall execute a separate certificate of
34 merit for each defendant named in the complaint.

35 (j) In any action subject to subdivision (g), no defendant may
36 be served, and the duty to serve a defendant with process does not
37 attach, until the court has reviewed the certificates of merit filed
38 pursuant to subdivision (h) with respect to that defendant, and has
39 found, in camera, based solely on those certificates of merit, that
40 there is reasonable and meritorious cause for the filing of the action

1 against that defendant. At that time, the duty to serve that defendant
2 with process shall attach.

3 (k) A violation of this section may constitute unprofessional
4 conduct and may be the grounds for discipline against the attorney.

5 (l) The failure to file certificates in accordance with this section
6 shall be grounds for a demurrer pursuant to Section 430.10 or a
7 motion to strike pursuant to Section 435.

8 (m) In any action subject to subdivision (g), no defendant may
9 be named except by “Doe” designation in any pleadings or papers
10 filed in the action until there has been a showing of corroborative
11 fact as to the charging allegations against that defendant.

12 (n) At any time after the action is filed, the plaintiff may apply
13 to the court for permission to amend the complaint to substitute
14 the name of the defendant or defendants for the fictitious
15 designation, as follows:

16 (1) The application shall be accompanied by a certificate of
17 corroborative fact executed by the attorney for the plaintiff. The
18 certificate shall declare that the attorney has discovered one or
19 more facts corroborative of one or more of the charging allegations
20 against a defendant or defendants, and shall set forth in clear and
21 concise terms the nature and substance of the corroborative fact.
22 If the corroborative fact is evidenced by the statement of a witness
23 or the contents of a document, the certificate shall declare that the
24 attorney has personal knowledge of the statement of the witness
25 or of the contents of the document, and the identity and location
26 of the witness or document shall be included in the certificate. For
27 purposes of this section, a fact is corroborative of an allegation if
28 it confirms or supports the allegation. The opinion of any mental
29 health practitioner concerning the plaintiff shall not constitute a
30 corroborative fact for purposes of this section.

31 (2) Where the application to name a defendant is made prior to
32 that defendant’s appearance in the action, neither the application
33 nor the certificate of corroborative fact by the attorney shall be
34 served on the defendant or defendants, nor on any other party or
35 their counsel of record.

36 (3) Where the application to name a defendant is made after
37 that defendant’s appearance in the action, the application shall be
38 served on all parties and proof of service provided to the court,
39 but the certificate of corroborative fact by the attorney shall not
40 be served on any party or their counsel of record.

1 (o) The court shall review the application and the certificate of
2 corroborative fact in camera and, based solely on the certificate
3 and any reasonable inferences to be drawn from the certificate,
4 shall, if one or more facts corroborative of one or more of the
5 charging allegations against a defendant has been shown, order
6 that the complaint may be amended to substitute the name of the
7 defendant or defendants.

8 (p) The court shall keep under seal and confidential from the
9 public and all parties to the litigation, other than the plaintiff, any
10 and all certificates of corroborative fact filed pursuant to
11 subdivision (n).

12 (q) Upon the favorable conclusion of the litigation with respect
13 to any defendant for whom a certificate of merit was filed or for
14 whom a certificate of merit should have been filed pursuant to this
15 section, the court may, upon the motion of a party or upon the
16 court's own motion, verify compliance with this section by
17 requiring the attorney for the plaintiff who was required by
18 subdivision (h) to execute the certificate to reveal the name,
19 address, and telephone number of the person or persons consulted
20 with pursuant to subdivision (h) that were relied upon by the
21 attorney in preparation of the certificate of merit. The name,
22 address, and telephone number shall be disclosed to the trial judge
23 in camera and in the absence of the moving party. If the court finds
24 there has been a failure to comply with this section, the court may
25 order a party, a party's attorney, or both, to pay any reasonable
26 expenses, including attorney's fees, incurred by the defendant for
27 whom a certificate of merit should have been filed.

28 (r) The amendments to this section enacted at the 1990 portion
29 of the 1989–90 Regular Session shall apply to any action
30 commenced on or after January 1, 1991, including any action
31 otherwise barred by the period of limitations in effect prior to
32 January 1, 1991, thereby reviving those causes of action which
33 had lapsed or technically expired under the law existing prior to
34 January 1, 1991.

35 (s) The Legislature declares that it is the intent of the Legislature,
36 in enacting the amendments to this section enacted at the 1994
37 portion of the 1993–94 Regular Session, that the express language
38 of revival added to this section by those amendments shall apply
39 to any action commenced on or after January 1, 1991.

1 (t) Nothing in the amendments to this section enacted at the
2 1998 portion of the 1997–98 Regular Session is intended to create
3 a new theory of liability.

4 (u) The amendments to subdivision (a) of this section, enacted
5 at the 1998 portion of the 1997–98 Regular Session, shall apply
6 to any action commenced on or after January 1, 1999, and to any
7 action filed prior to January 1, 1999, and still pending on that date,
8 including any action or causes of action which would have been
9 barred by the laws in effect prior to January 1, 1999. Nothing in
10 this subdivision is intended to revive actions or causes of action
11 as to which there has been a final adjudication prior to January 1,
12 1999.

13 ~~SECTION 1. Section 340.1 of the Code of Civil Procedure is~~
14 ~~amended to read:~~

15 ~~340.1. (a) In an action for recovery of damages suffered as a~~
16 ~~result of childhood sexual abuse that was not barred by the law in~~
17 ~~effect prior to January 1, 2014, there shall be no statute of~~
18 ~~limitations and any of the following actions may be commenced~~
19 ~~at any time:~~

20 ~~(1) An action against any person or entity for directly or~~
21 ~~vicariously committing an act of childhood sexual abuse.~~

22 ~~(2) An action for liability against any person or entity who owed~~
23 ~~a duty of care to the plaintiff, where a wrongful or negligent act~~
24 ~~by that person or entity was a legal cause of the childhood sexual~~
25 ~~abuse which resulted in injury to the plaintiff.~~

26 ~~(3) An action for liability against any person or entity where an~~
27 ~~intentional act by that person or entity was a legal cause of the~~
28 ~~childhood sexual abuse which resulted in injury to the plaintiff.~~

29 ~~(b) In an action for recovery of damages suffered as a result of~~
30 ~~childhood sexual abuse that was barred by the law in effect prior~~
31 ~~to January 1, 2014, the time for commencement of the action shall~~
32 ~~be within 30 years of the date the plaintiff attains the age of~~
33 ~~majority or within five years of the date the fact of the injury and~~
34 ~~its causal connection to the sexual abuse is first communicated to~~
35 ~~the plaintiff by a physician, psychologist, or clinical psychologist~~
36 ~~licensed to practice and practicing within the state, whichever~~
37 ~~period expires later, for any of the following actions:~~

38 ~~(1) An action against any person or entity for directly or~~
39 ~~vicariously committing an act of childhood sexual abuse.~~

1 ~~(2) An action for liability against any person or entity who owed~~
2 ~~a duty of care to the plaintiff, where a wrongful or negligent act~~
3 ~~by that person or entity was a legal cause of the childhood sexual~~
4 ~~abuse which resulted in injury to the plaintiff.~~

5 ~~(3) An action for liability against any person or entity where an~~
6 ~~intentional act by that person or entity was a legal cause of the~~
7 ~~childhood sexual abuse which resulted in injury to the plaintiff.~~

8 ~~(c) Any claim for damages that may not be timely commenced~~
9 ~~under subdivision (a) or (b), as amended January 1, 2014, is revived~~
10 ~~and a cause of action may be commenced within one year of~~
11 ~~January 1, 2014. Nothing in this subdivision is intended to alter~~
12 ~~the applicable statute of limitations for any claim described in~~
13 ~~subdivision (a) or (b) that is not time barred by the amendments~~
14 ~~taking effect on January 1, 2014.~~

15 ~~(d) “Childhood sexual abuse” as used in this section includes~~
16 ~~any act committed against the plaintiff that occurred when the~~
17 ~~plaintiff was under 18 years of age and that would have been~~
18 ~~proscribed by Section 266j of the Penal Code; Section 285 of the~~
19 ~~Penal Code; paragraph (1) or (2) of subdivision (b), or of~~
20 ~~subdivision (c), of Section 286 of the Penal Code; subdivision (a)~~
21 ~~or (b) of Section 288 of the Penal Code; paragraph (1) or (2) of~~
22 ~~subdivision (b), or subdivision (c), of Section 288a of the Penal~~
23 ~~Code; subdivision (h), (i), or (j) of Section 289 of the Penal Code;~~
24 ~~Section 647.6 of the Penal Code; or any prior laws of this state of~~
25 ~~similar effect at the time the act was committed.~~

26 ~~(e) Nothing in this section shall be construed to alter the~~
27 ~~otherwise applicable burden of proof, as defined in Section 115~~
28 ~~of the Evidence Code, that a plaintiff has in a civil action subject~~
29 ~~to this section.~~

30 ~~(f) Nothing in this section is intended to create a new theory of~~
31 ~~liability.~~

32 ~~(g) Nothing in this section is intended to alter the decision in~~
33 ~~Shirk v. Vista Unified School Dist. (2007) 42 Cal.4th 201.~~

34 ~~(h) Nothing in this section is intended to revive any action or~~
35 ~~cause of action that has been litigated to finality on the merits in~~
36 ~~any court of competent jurisdiction prior to January 1, 2014.~~